IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19339 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MUKESH ALIAS BALLU BALRAM MADRASI THRO MOTHER TULSIBEN - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MS JAYSHREE C BHATT for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/11/2005

ORAL JUDGMENT

1. Mukesh alias Ballu Balram Madrasi-has filed this petition of habeas corpus through his mother Ms.

Tulsiben praying for issue of appropriate writ or order to quash and set aside the order of detention dated 08.06.2005 passed by Commissioner of Police, Ahmedabad city-detaining authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'PASA Act'). The order passed by the detaining authority is illegal, null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 21st September, 2005. The matter was placed before this Court on 23rd September, 2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued **RULE**.

2. Heard, Ms. Jayshree C. Bhatt, learned Advocate for the petitioner and Mr. Gohil, learned A.P.P. for respondents. Learned Advocate for the petitioner invited my attention to the order of detention dated 08.06.2005 and the grounds supplied therein, which reveals three cases registered against the detenu at different police stations.

3. The first incident pertains to chain snatching registered at Amraiwadi police station being C.R. No. I-227 of 2005 dated 06.04.2005 punishable under Section 379, 356, 114 of I.P.C. The second incident pertains to theft of 'Hero Honda Splendor' motorcycle registered at Satelite police station being C.R. No. I354 of 2005 dated 09.05.2005 punishable under Section 379 and 114 of I.P.C. The third incident is registered at Sarkhej police station being C.R. No. II-86 of 2005 dated 14.05.2005 punishable under Section 25.1A,B of the Arms Act. In all the above mentioned cases investigation is going on. Recording of statement of two witnesses dated 20th April, 2005 and 11th April, 2005 respectively which have been duly verified by Police Commissioner, Ahmedabad is also mentioned in the grounds of detention.

4. On the basis of the aforesaid facts detaining authority has passed order of detention against the detenu branding him as a 'dangerous person' under the provisions of the said Act. Ms. Jayshree C. Bhatt, learned Advocate for the

petitioner has made following contentions,

4.1 Detention order of the petitioner is in violation of constitutional rights guaranteed and enshrined under the various articles of Constitution of India, more particularly, Article 21 and 22 of Constitution of India.

4.2 The detaining authority has failed to report the facts of detention of the petitioner along-with the other materials to the State Government forthwith as contemplated under Section 3(3) of the Act. Therefore, continued detention of the petitioner has become bad in law.

4.3 It was contended that it is alleged in the grounds of detention that petitioner is branded as a 'dangerous person' and his activities are prejudicial to the maintenance of 'public order'. It was further submitted that detaining authority failed to substantiate that the alleged anti-social activities of the petitioner, adversely affecting or likely to affect the maintenance of 'public order'. It may be

noted that the petitioner is described as 'dangerous person' within the meaning of Section 2(c) of the PASA Act. But, merely because the petitioner is branded as 'dangerous person' he cannot be preventively detained under the provisions of the said Act, unless as laid down in Section 3(4) of the Act, his activities as 'dangerous person' affects adversely or is likely to affect the maintenance of 'public order'. Thus, the order of detention deserves to be quashed and set aside.

5. It was further submitted that the petitioner was in judicial custody in connection with the cases registered against the petitioner. Moreover, when the last offence was registered against the petitioner on 14.05.2005 he was in judicial custody. Therefore, there was no necessity to pass order of detention against the petitioner on 08.06.2005. Thus, action of the detaining authority shows total non-application of mind on the part of the detaining authority. In the circumstances continued detention deserves to be quashed and set aside and detenu be set at liberty.

6. As regards last contention learned Advocate for the petitioner has relied upon judgment of the apex Court in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported in AIR 2000 SC 3675. Learned Advocate for the petitioner has also relied upon the apex Court judgment in AIR 2003 SC 971. He has also placed reliance on another judgment of apex Court in the case of Vinod Singh Vs. District Magistrate wherein it was held that if a person is already in custody, on mere possibility of him being released on bail, power of detention should not ordinarily be exercised. The Hon'bel apex Court has held that there must be cogent and credible material on record before passing the order of detention.

7. Learned Counsel has also relied upon identical judgment of this Court in the case of Naresh alias Lalo Babubhai Vs. State of Gujarat and Others reported in 2002(1) GLH 528 wherein Hon'ble Mr. Justice H.K. Rathod set out the same principle.

8. Mr. Gohil, learned A.P.P. has submitted that registration of statement of witnesses go to show that the detenu may indulge into such criminal activities which can be said to be amount to disturbance of 'public order'. Mr. Gohil, learned A.P.P. has relied upon first incident of theft of golden chain valued at Rs.10,000/. Mr. Gohil, learned A.P.P. has further submitted that there was sufficient material before detaining authority to pass order of detention and no interference is called for by exercise of power under Article 226 of the Constitution of India.

9. Having heard learned Advocates for the parties and having perused record and after going through the judgment of the apex Court in the case of Amritlal and other (Supra) and judgment of this Court in the case of Naresh alias Lalo Babubhai(Supra) which I have referred; in my opinion the detaining authority has passed order of detention without any cogent and credible material on record, assuming that the detenu will prefer bail application and he will be enlarged on bail and will continue to

indulge in anti-social-criminal activities prejudicial to maintenance of 'public order'. Here, consideration of possibility of presentation of an application for bail and consideration of possibility of granting of bail in the event of preferring such application for bail are different and distinct and required to be taken into consideration by detaining authority before passing the order of detention.

10. The matter is squarely covered by aforesaid judgments of the apex Court in the case of Amritlal and other (Supra) and judgment of this Court in the case of Naresh alias Lalo Babubhai(Supra) which I have referred, and therefore, the order of detention cannot be sustained and deserves to be quashed and set aside.

11. In the result, Ms. Bhatt, learned Advocate for the petitioner has relied on the order of this Court in S.C.A. No.18012 of 2005 in the case of Mahendrasinh alias Mukesh Chandrasinh Rajput Vs. State of Gujarat and others. When the said order was passed regarding co-detainee, my learned brother

Hon'ble Mr. Justice A.S. Dave allowed the petition also on the same ground.

12. In the result this petition is allowed and order of detention dated 08.06.2005 is quashed and set aside. Mukesh alias Ballu Balram Madrasi-detenu is ordered to be released forthwith if he is not required in connection with any other case. Rule made absolute accordingly. D.S. permitted.

(K.M.MEHTA, J.)

Umesh/